

VZCZCXR05077
PP RUEHLMC RUEHVC
DE RUEHUM #0143 0640936
ZNR UUUUU ZZH
P 050936Z MAR 07
FM AMEMBASSY ULAANBAATAR
TO RUEHC/SECSTATE WASHDC PRIORITY 0872
INFO RUEHMO/AMEMBASSY MOSCOW 1707
RUEHBJ/AMEMBASSY BEIJING 5442
RUEHUL/AMEMBASSY SEOUL 2651
RUEHKO/AMEMBASSY TOKYO 2393
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SUBJECT: Constitutional Court Strikes Down New Minerals and
Anticorruption Laws

Ref: Ulaanbaatar 115

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¶1. (U) On March 2, the Constitutional Court struck down the new Minerals Law and Anticorruption Law passed by Parliament last July. The laws took weeks to emerge from the Parliament Secretariat last summer, in the interim undergoing extensive changes by both the Secretariat staff and Speaker Nyamdorj. A citizen who urged the

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Constitutional Court to strike down the Minerals Law stated that changes from what Parliament had passed had been made in 147 clauses of the law, or over half of its provisions. Speaker Nyamdorj's representatives argued that there had been an accepted practice of editorial changes being made by the Speaker and Secretariat, and that last July the Parliament had authorized the editing of the passed texts. They added that the laws as passed needed editing, especially the Mining Law, an unwieldy amalgamation of two different drafts. However, the Constitutional Court ruled that the post-passage changes in both the Minerals and Anticorruption laws were pervasive and substantive, and thus violated the Constitution's stipulation that only Parliament can pass legislation.

¶2. (U) The Constitutional Court's decision has immediate effect, and suspends implementation of the two laws. The Spring session of the State Great Hural has 15 days after it convenes in early April to consider and vote on the Constitutional Court's position. If the Parliament votes to overrule the decision, then the Constitutional Court will again sit and make the final ruling on the constitutionality of the laws.

¶3. (SBU) Comment: The Court's decision throws into immediate disarray the staffing up of the new Anticorruption Agency, as well as the negotiations on the Oyu Tolgoi copper mine project with Ivanhoe Mines/Rio Tinto under the provisions of the radically revised Minerals Law (under which, for instance, the state gained the right to seek a major equity share in the project). The

extensive, often substantive, edits made by Speaker Nyamdorj and the Secretariat in the major laws passed last summer had raised

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eyebrows, with most observers seeing them as going far beyond the minor changes made to laws in past years. However the constitutional issue is ultimately decided, MPs may ultimately choose during the Spring session to re-enact the laws using the texts as "improved" by the Speaker.

Minton